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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,422	11/12/2003	Hal C. Danby	DB-5770DIV4 (BXTW 11001.6	6801
7590 03/25/2004			EXAMINER	
Francis C. Kowalik Baxter Healthcare Corporation One Baxter Parkway, 32E Deerfield, IL 60015-4633			WEEKS, GLORIA R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,422

Applicant(s)

DANBY ET AL.

Examiner

Gloria R Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeler (USPN 5,803,317,) in view of Jackson et al. (USPN 5,230,566).

In reference to claims 1-7, Wheeler discloses a method of dispensing a fluent material, comprising the steps of: selectively dispensing fluent material through an open end of a nipple (30) of a first flexible bag (12) positioned for dispensing fluent material by deforming (figures 8 and 9) the nipple (30) to eject fluent material therefrom; sealing the open ends of the nipples (30) of the first flexible bag (12; column 5, lines 58-61); positioning a second flexible bag having nipples for dispensing fluent material from the nipples to the articles (column 2, line 67-column 3, line 7); selectively dispensing fluent material through an open end of the nipple (30) of a second flexible bag by deforming the nipple (30) to eject fluent material therefrom (column 5, lines 62-65). Although Wheeler does not disclose filling the flexible bag in an aseptic environment and sterilizing the flexible bag and fluent material after said filling step, it would have been obvious to one having ordinary skill in the art at the time the invention was made to do so since Examiner takes Official Notice that the use of aseptic environments and sterilization procedures is well known in the art of packaging food products. Furthermore, Wheeler discloses that an objective of filling the food products in the flexible bags is to ensure a sanitary condition of the food product and the dispensing apparatus (column 2, lines 60-65).

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Wheeler discloses sealing the end of the nipple (30), but does not disclose the ends being sealed by removable plugs, nor does Wheeler disclose the use of multiple nipples. Jackson et al. teaches a method of dispensing fluent material from a flexible bag (12) through multiple nipples (39) and sealing the nipples (39) with removable plugs (43). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the flexible bag used by Wheeler to include the multiple nipples et al. for the purpose of dispensing the fluent material at a greater rate (Jackson et al.-column 5, lines 7-10 and 18-22), and to use the removable plugs of Jackson for the purpose of resealing the nipples.

Conclusion


3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (703) 605-4211. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 305-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


grw

Gloria R Weeks
Examiner
Art Unit 3721


Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700